

Attorney Docket No.: 2870/72

PATENT

#24
AKD
2-27-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Shah

Serial No.: 09/248,524

Group Art Unit: 1617

Filed: February 9, 1999

Examiner: Berman, Alycia

For: Long-Wearing Cosmetic Compositions

RESPONSE PURSUANT TO 37 CFR 1.113

The Assistant Commissioner of Patents and Trademarks

Washington, D.C. 20231

Dear Sir:

In the Examiner's Office Action of September 18, 2002, the claims of the present invention remain rejected for indefiniteness and obviousness. In response, Applicants request consideration of the following remarks which are believed to place the application in condition for allowance or in better condition for appeal in the event the final rejection is maintained. Applicants request an extension of time for two months under 37 CFR 1.136(a).

REMARKS

The specification, according to the Examiner, does not provide a written description in support of a flow-through cosmetic applicator used in Claims 15 to 18. Further, the Examiner notes that an argument addressing this rejection under 35 USC §112, first paragraph has not been set forth specifically and individually. This has been due to an inadvertence. Applicants presently assert however, that support is found in the specification at page 5, lines 12 to 16, and lines 23 to 25, wherein it describes a flow-through nib-type pen for applying the composition. Specifically, the flow-through nib-type pen includes, *inter alia*, a wick-type nib pen. Therefore, a flow-through cosmetic applicator is described with particularity for one of ordinary skill in the art to understand the subject matter that is distinctly claimed in the present invention. Applicants assert that the description of a flow-through pen in the present specification is understood by one of ordinary skill in the art as being a wick-type nib pen applicator. It is not necessary for Applicants to describe this type of pen as it is well-known by one of ordinary skill in the art for at least 15 or more years. This is evidenced by the description of such a pen in the reference, U.S. Patent No. 4,761,277 dated August 2, 1988, cited by the Examiner. It is not necessary that the specification describe